

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:07-CR-101-BR-1

UNITED STATES OF AMERICA

v.

ANTHONY DANIEL SMITH, JR.

ORDER

This matter is before the court on defendant's *pro se* motion challenging his sentence under Federal Rule of Civil Procedure 60(b)(6) based on ineffective assistance of counsel at sentencing and on direct appeal. (DE # 228.) The court construes the motion as a second or successive habeas corpus petition under 28 U.S.C. § 2255. See Gonzalez v. Crosby, 545 U.S. 524, 532 (2005). As such, petitioner must first seek authorization from the Fourth Circuit Court of Appeals before this court can consider the motion. See 28 U.S.C. §§ 2244(b), 2255(h). The motion is DISMISSED WITHOUT PREJUDICE. The court finds that petitioner has not made "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and therefore, a certificate of appealability is DENIED.

This 5 July 2018.



W. Earl Britt

Senior U.S. District Judge